LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUL 11 1966
JOHN F. DAVIS, CLERK

Supreme Court of the United States

OCTOBER TERM, 1965

No. 229

LAWRENCE J. REYNOLDS, d/b/a LARRY & KATZ, and JOHN SCHWEGMANN, JR., and PAUL SCHWEGMANN

Appellants,

versus

LOUISIANA BOARD OF ALCOHOLIC BEVERAGE CONTROL

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

MOTION TO DISMISS

GEORGE A. BOURGEOIS,
Attorney
La. Board of Alcoholic Beverage Control
P. O. Box 2708
Baton Rouge, La.

SEHRT, BOYLE & WHEELER
CLEM H. SEHRT & PETER J. BUTLER,
Attorneys
La. Board of Alcoholic Beverage Control
712 American Bank Bldg.
New Orleans, La.

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1411

LAWRENCE J. REYNOLDS, d/b/a LARRY & KATZ, and JOHN SCHWEGMANN, JR., and PAUL SCHWEGMANN

Appellants,

versus

LOUISIANA BOARD OF ALCOHOLIC BEVERAGE CONTROL

Appellee.

ON APPEAL FROM THE SUPREME COURT OF LOUISIANA

MOTION TO DISMISS

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves to dismiss this case on the ground that the federal question presented is so unsubstantial as not to warrant further argument.

STATEMENT

The Louisiana Legislature, during its regular session held in 1962, enacted into law a statute regulating the sale of intoxicating beverages in wholesale quantities. Act. No. 463 of the Regular Session of the 1962 Legis-

lature of Louisiana. (Now designated as Louisiana Revised Statutes, Title 26, Section 80, Subsections D through H.) Pursuant to this Act, the Louisiana Board of Alcoholic Beverage Control, Appellee herein, refused to issue 1963 wholesale liquor permits to Appellants herein. It is admitted that neither Appellant is qualified to receive such a permit under the terms of the 1962 Act. Both Appellants filed suit on December 3, 1962, in the Civil District Court for the Parish of Orleans, State of Louisiana, seeking to have the subject statute declared repugnant to the Constitutions of both the State of Louisiana and the United States of America. Because of their similarity, these two suits were consolidated for trial and all of the evidence entered into the record was by way of joint stipulation between counsel for the litigants.

The State District Court, on March 13, 1964, rendered its decision dismissing the suits of both appellants. From those judgments, Appellants appealed to the Fourth Circuit Court of Appeal for the State of Louisiana. On March 8, 1965, that Court reversed the decision of the District Court and held that the subject statute did violate both the Louisiana and United States Constitutions. However, on June 7, 1965, the Supreme Court of Louisiana granted a Writ of Certiorari to review the decision of the State Appellate Court. After a full presentation of the case was made by brief and oral argument by counsel for both Appellants and Appellee, the State Supreme Court, on December 13, 1965, reversed the decision of the State Appellate Court and reinstated the decision of the State District Court sustaining the constitutionality of the subject act. In a thorough and well written opinion, the Court found that the Act in

question was a valid exercise of the police power of the State in regulating the flow of liquor in wholesale quantities within its bounds. It is from this decision that the Appellants have appealed.

ARGUMENT

The instant statute was enacted pursuant to the police power of a state to control the flow of liquor in wholesale quantities within its bounds. The Louisiana Legislature sought to establish a class of true wholesalers within the state liquor business. Section D of this statute, in effect, legislatively defines the functions of a wholesaler and limits wholesale liquor permits to those parties who discharge those functions. As the State Supreme Court noted in its opinion:

> "It requires that wholesalers maintain warehouse space. It requires that such space be sufficient to store specified quantities of liquor. It requires that a certain stock of liquor be maintained. It requires that delivery equipment be maintained. It requires that brand representation be maintained with at least one distillery . . . Finally, it requires that a certain amount of the wholesaler's sales be made to retailers, and that such sales account for a certain percentage of the gallonage handled by the wholesaler . . . "
> *Reynolds v. Louisiana Board of Alcoholic Bev. Con.*, 248 La. 639, 181 So. 2d 377 at pages 381, 382.

In the Jurisdictional Statement filed by Appellants in this Court, three attacks are leveled at the constitutionality of the subject statute. The first attack concerns itself with that provision of the statute which

limits a wholesale liquor license to one who "maintains sales of liquor to retailers generally within his immediate trade area, making sales to at least twenty per cent of the retailers in that area." Appellants contend that this provision will foreclose the issuance of any further wholesale liquor licenses as no new applicant for a license can be selling to twenty per cent of the available retailers at the time he applies for a license. However, this interpretation is obviously strained and patently erroneous. This provision establishes a condition subsequent to the issuance of a license, i.e. unless a permittee maintains this required percentage of retail sales, his license will not be reissued. No other construction of this provision is feasible. The best evidence in support of this construction is the record which reflects that in the period of less than six months between the effective date of this statute and the time when the stipulations were formulated in the instant case, a new business, having satisfied all of the provisions of the subject statute, was given a wholesale liquor license.

The second attack set forth in the Jurisdictional Statement challenges the authority of the State Legislature to define what it believes to be the desirable qualities which a liquor wholesaler should possess, and to limit wholesale liquor licenses to only those parties who possess these qualities. The standards set forth in the statute are certainly reasonable, and the State, under Section Two of the Twenty-First Amendment to the United States Constitution, and pursuant to its police power, may insist that any applicant for a wholesale liquor license satisfy these standards. The state has the right, even a duty, to police the flow of alcoholic beverages within its bounds. *Joseph E. Seagram & Sons, Inc.*

v. Hostetter, 16 L. ed. 2d 336, 86 S. Ct. 1254. In upholding the constitutionality of this Act, the Louisiana State Supreme Court held:

> "It is hardly necessary to state that an economically stable and financially responsible wholesale liquor business (as stated supra in the Board's explanation of the purpose of the instant statute) affects the social, moral, and economic welfare of the public. The provisions of the instant statute if enforced will undoubtedly engender stability and responsibility. Therefore, a definite relationship exists between LSA-R.S. 26:80 (D) and the purpose for which it was enacted." *Reynolds v. Louisiana Board of Alcoholic Bev. Con.*, supra at page 382.

The third and last attack upon the constitutionality of the instant statute set forth in the Jurisdictional Statement concerns itself with a charge of discrimination. The provisions of Section D of the subject statute do not apply to those wholesalers who primarily export alcoholic beverages into other states. However, it is submitted, this exclusion is reasonable as the state has no real interest in export sales as the traffic of liquor is flowing out of the State of Louisiana into another state; consequently, the Louisiana retailer and consumer are not affected. Moreover, as the Louisiana courts have noted in this case, this is an exception of a class or particular kind of wholesaler, not common to the class of wholesalers to which Appellants belong.

It should be noted that the Department of Alcoholic Beverage Control for the State of California enacted into law an administrative rule which is almost identical with the subject statute. (This rule did not con-

tain the exclusionary provision relating to wholesalers who sold liquor primarily for export from the state.) The constitutionality of this rule was also attacked. The California Appellate Court which heard the case recognized that the State Department of Alcoholic Beverage Control was well within its rights to require a high standard of economic stability for those who are to hold wholesale liquor licenses, and held the rule to be constitutional. This Court denied an application for a Writ of Certiorari filed with respect to that case. *Duke Molner Wholesale Liquor Co. v. Martin*, 4 Cal. Reptr. 904, Certiorari den., 364 U. S. 870, 5 L. ed. 2d 92, 81 S. C. 112.

CONCLUSION

It is respectfully submitted that the subject statute is reasonable and was enacted by the State Legislature pursuant to its police power and under the authority of Section Two of the Twenty-First Amendment to the Constitution of the United States. The appellants have presented no substantial federal question for the decision of this Court, and accordingly, this Motion to Dismiss should be granted.

Respectfully submitted,

SEHRT, BOYLE & WHEELER
Clem H. Sehrt
Peter J. Butler — Counsel of Record
Attorneys for La. Board of
Alcoholic Beverage Control
712 American Bank Building
New Orleans, Louisiana

By: Peter J. Butler
Peter J. Butler

July 8th, 1966

PROOF OF SERVICE

I, Peter J. Butler, counsel of record for the Louisiana Board of Alcoholic Beverage Control, Appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that a copy of the foregoing Motion to Dismiss was transmitted to Saul Stone of Stone, Pigman and Benjamin, counsel of record for Lawrence J. Reynolds, d/b/a Larry & Katz and John Schwegmann, Jr., and Paul Schwegmann, Appellants herein, by depositing it in the United States mail, first class postage prepaid, addressed to him at his office in the Whitney Bank Building, New Orleans, Louisiana, this 8th day of July, 1966.

New Orleans, Louisiana, this 8th day of July, 1966.

Peter J. Butler

Peter J. Butler